

One Set of Possible Statutory Changes Under Planning and Zoning Reform

Possible Changes for All Communities

- 1. Limitations on Requirements for Subdivisions.** (A) Tighten current c. 41, s. 81Q requirements so that subdivision roads cannot be required to exceed reasonable public way standards. (B) Limit consideration of off-site traffic impacts (that is, other than within or at property boundaries) under subdivision review. (C) Limit ability of subdivision rules and regulations to address subjects already covered elsewhere by local ordinance or bylaw (e.g., stormwater management) in a duplicative or inconsistent manner.
- 2. Requirement of Declaration of Development Intent for Plan Freezes.** Require property owners/developers to file a declaration of development intent (e.g., intent to develop 100 single-family houses, intent to develop 500,000 square feet of industrial space) prior to filing of subdivision plans in order to obtain zoning freeze. Eight year zoning freeze would: (A) run from date of filing of declaration of development intent; (B) render inapplicable zoning changes the first public notice of which had not occurred prior to the filing of the declaration; and (C) apply to the intended development, not to the land.
- 3. Expansion of Permit Freezes.** Construction or operations under a special permit or site plan approval would not need to conform to subsequent changes to zoning or other local land use ordinances or bylaws so long as the use or construction is commenced within a period of three years after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. For the purpose of the prior sentence, construction involving the redevelopment of previously disturbed land would be deemed to have commenced upon substantial investment in site preparation and/or infrastructure construction, and construction of development intended to proceed in phases would have to proceed expeditiously, but not continuously, among phases.
- 4. Limitation of Scope of Site Plan Approval/Required Mitigation.** Preclude case-by-case consideration of the possible off-site impacts of development, and of possible mitigation for such impacts, for as of right uses (including as of right uses requiring site plan approval), except for a generally applicable, reasonable and consistent impact fee on such development (which fees are dedicated to a pre-established capital improvements plan and which fees do not include assessments for educational facilities or services).
- 5. Limitations on Certain Appeals.** Limit appeals under the subdivision control law and site plan review to providing an opportunity to ensure that the relevant authority did not make a clear error of fact or law, more like building permit appeals than special permit appeals.

6. **Majority Vote for Zoning Ordinances/Bylaws.** Establish the majority vote as the standard for approval of a zoning ordinance or bylaw, unless the municipality chooses to use a two-thirds standard.

7. **Allow Regulation of Maximum Residential Floor Area.** Eliminate the existing prohibition on such regulation.

8. **Explicit Statutory Authorization of Certain Powers.** Explicitly affirm the authority of municipalities to adopt and implement site plan approval, impact fees, TDR, cluster/OSRD and form based zoning.

Possible Changes for "Opt In" Communities

1. **ANR/Minor Subdivision.** (A) Allow municipalities to limit or eliminate the ANR exemption. (B) Require municipalities to have a limited and efficient minor subdivision review process.

2. **Changes to Subdivision Plan Freeze.** (A) Reduce the duration of the plan freeze to three years (five years if there has been substantial investment in infrastructure development). (B) Plan freeze would render inapplicable any subsequent changes in zoning or other local land use ordinances or bylaws (for duration of plan freeze).

3. **Rate of Growth.** A zoning ordinance or by-law that imposes a reasonable limitation on the number of new housing units within residential development districts for which building permits may be issued in any twelve month period shall not be declared exclusionary or otherwise against public policy.

4. **Natural Resource Protection Zoning.** A zoning ordinance or by-law that requires a minimum lot area of two acres or more for single-family residential development upon farmland, forest land or other land of environmental resource value shall not be declared exclusionary or otherwise against public policy.

Analysis of Possible Changes for All Communities

Six of the eight possible changes for all communities listed above are likely to be seen as “zero sum” changes by municipalities, property owners and developers. That is, any change that is perceived as somewhat positive from the perspective of a municipality is likely to be perceived as somewhat negative from the perspective of property owners and developers, and vice versa. Nonetheless, from the Administration’s perspective, there may be reasons to favor a change independent of those points of view:

Possible Change	Municipal Perspective	Developers’ Perspective	Administration Perspective
Limitations on Requirements for Subdivisions	Negative	Positive	The current trend towards increased local requirements for subdivision improvements makes housing more expensive and is not environmentally friendly.
Requirement of Declaration of Development Intent for Plan Freezes	Positive	Negative	It is reasonable that a eight-year zoning freeze: (a) start when a property owner announces its development plans; and (b) be limited to protecting those development plans.
Expansion of Permit Freezes	Negative	Positive	It is reasonable for a property owner obtaining site plan approval or a special permit for its development plans to be able to rely on the local rules in place at the time of that approval or permit.
Limitation of Scope of Site Plan Approval/Required Mitigation	Negative	Positive	Allowing site plan review to include consideration of off-site impacts and/or mitigation for such impacts makes the approval process inherently discretionary. Discretionary municipal approval of that type should be exercised by special permit.
Allow Regulation of Maximum Residential Floor Area	Positive	Negative	Existing limitation prevents regulatory control that could help preserve community character, make housing more affordable and reduce impact on environment.
Explicit Statutory Authorization of Certain Powers	Positive	Negative	Current uncertainty regarding municipal authority appears to be limiting use of appropriate powers.